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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

13 Cr. 889 (RMB)

JAMES SMITH,

Defendant.

New York, N.Y.
January 8, 2018
2:30 p.m.

Before:

HON. RICHARD BERMAN

District Judge

APPEARANCES

GEOFFREY S. BERMAN

Interim United States Attorney for the
Southern District of New York

BY: JUSTINA GERACI

Assistant United States Attorney

AVRAHAM MOSKOWITZ

Attorney for Defendant

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(Case called)

(In open court)

THE COURT: So we have Mr. Moskowitz back.

MR. MOSKOWITZ: Yes, your Honor. I apologize for this morning.

THE COURT: Oh, no, no, no, I didn't mean that. I mean back in. No need to apologize.

So the question is in light of the mandate from the Second Circuit how you all wish to proceed. So just so you know, it was my intention to sentence within the guideline range. So, on Count One of the sentence, to the extent it's interpreted as being over that range, it's not my intention. And it also was my intention, is my intention, to sentence concurrently. But I don't mean to short circuit any steps you may wish to take or any suggestions that you have. I'm interested to hear you out.

MR. MOSKOWITZ: Your Honor, we're prepared to proceed. I don't have anything additional to add to my original sentencing submission. I made the argument at that time as to what we thought the appropriate sentence was. Your Honor went a little bit above what we were advocating for. I renew those original arguments and ask the court to consider a sentence below that initially imposed. But I understood from the sentence, which is why I didn't object at the time, because I kind of understood where your Honor was headed.

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1 THE COURT: Right, OK.

2 MR. MOSKOWITZ: May I have a moment, Judge?

3 THE COURT: Sure.

4 MR. MOSKOWITZ: We're ready, Judge.

5 THE COURT: So I think just so the record is the most
6 clear, what I'm going to do is -- I mean I've signaled what my
7 intention was and is, but I think it's best if we put the
8 matter over for a relatively short period, and if each side
9 could submit a letter, however long or short you wish, and then
10 we will set a date following those two submissions so that
11 everybody has the opportunity to say what they wish to say,
12 because it is an important matter, and we should treat it that
13 way.

14 I would suggest that the defense submit first, and you
15 tell me what is a comfortable date for you, Mr. Moskowitz.

16 MR. MOSKOWITZ: Your Honor, I am leaving on Thursday
17 for a rather lengthy vacation luckily for me, so I would
18 suggest mid to late February, because I won't be back until the
19 29th.

20 THE COURT: OK. So you give me a good date. So there
21 is no prejudice -- just so Mr. Smith is aware -- by delaying.
22 We are setting a date in February or March. There is no
23 disadvantage to him.

24 MR. MOSKOWITZ: The week of the 12th, so maybe the
25 15th, or the 16th, in the morning, if that works for the court.

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1 THE COURT: For the return date or for your
2 submissions?

3 MR. MOSKOWITZ: I can make my submission I guess by
4 the 16th?

5 THE COURT: Of February?

6 MR. MOSKOWITZ: Yes.

7 THE COURT: 2/16. And then the government by?

8 MS. GERACI: We probably only need a week or so.

9 THE COURT: So, how about 2/23? Then can are you
10 comfortable to come back on the 26th or the 27th? Do those
11 dates work? Wait, hold on. I should say the 28th would be
12 better for me if it works for you.

13 MR. MOSKOWITZ: That's fine. I actually have to be in
14 Central Islip at one, so any other day in that week I think
15 probably works better.

16 THE COURT: How about March 1?

17 MR. MOSKOWITZ: I'm here at 11 o'clock in front of
18 Judge Swain, so I can come before or after, either one.

19 THE COURT: Is 9:30 too early?

20 MR. MOSKOWITZ: Not for me.

21 THE COURT: So let's say March 1 at 9:30. And I will
22 give you a ruling at that time. How is that? Great. All
23 right. Nice to see you.

24 MR. MOSKOWITZ: One moment.

25 THE COURT: Oh, sure.

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1 MS. GERACI: Thank you.

2 MR. MOSKOWITZ: OK. Thank you, Judge.

3 THE COURT: All right. See you then. Thanks a lot.

4 (Adjourned)

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